

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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SOUTH FORK LIVESTOCK  
PARTNERSHIP,

Plaintiff,

v.

UNITED STATES OF AMERICA; *et al.*,  
Defendants.

3:15-CV-00066-LRH-VPC

ORDER

Before the court is defendants United States of America, United States Department of the Interior, Bureau of Land Management (“BLM”), Bureau of Indian Affairs (“BIA”) (collectively the “United States Defendants”), Brad Sones, Joseph McDade, Rich Adams, Dave Smith, Amy Leuders, and Bryan L. Bowke’s (collectively the “Federal Employees”)<sup>1</sup> Motion to Dismiss. Doc. #35.<sup>2</sup> Plaintiff South Fork Livestock Partnership (“SFLP”) filed a response to the Motion to Dismiss (Doc. #42), to which Defendants replied (Doc. #44).

Also before the court is defendant Alice Tybo’s Motion to Dismiss (Doc. #41), and defendants Cheryl Mose-Temoke, Gilbert Temoke, and Brandon Reynolds’ Motion to Dismiss (Doc. #57). Alice Tybo, Cheryl Mose-Temoke, Gilbert Temoke, and Brandon Reynolds will collectively be referred to as the “Tribal Defendants.” SFLP filed a response to Alice Tybo’s

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<sup>1</sup> The United States Defendants and the Federal Employees are referred to either individually or collectively as the “Federal Defendants.”

<sup>2</sup> Refers to the court’s docket numbers.

1 Motion to Dismiss (Doc. #43), to which she replied (Doc. #47). SFLP also filed a response to  
2 Cheryl Mose-Temoke, Gilbert Temoke, and Brandon Reynolds' Motion to Dismiss (Doc. # 60),  
3 to which they replied (Doc. # 66).

4 **I. FACTUAL BACKGROUND**

5 This action involves a dispute over the use of grazing permits on federal land. Plaintiff  
6 SFLP is a partnership made up of several tribal members of the Te-Moak Tribe of Western  
7 Shoshone Indians of Nevada (the "Te-Moak Tribe") who were granted grazing permits by the  
8 United States Bureau of Land Management to graze cattle on various public lands located in  
9 Elko County, Nevada, known as the Shoshone allotment. The Te-Moak Tribe is comprised of  
10 four Bands: the Battle Mountain Band, the Elko Band, the Wells Band, and the South Fork Band.  
11 The Te-Moak Tribal Council exercises overall jurisdiction over its Bands and all tribal lands, but  
12 individual bands control grazing permits on their respective lands. Tribal Defendants Alice Tybo,  
13 Cheryl Mose-Temoke, Gilbert Temoke, and Brandon Reynolds are voting members of both the  
14 Te-Moak Tribal Council and the South Fork Band Council.

15 The Shoshone allotment is comprised of federal land managed by the BLM and tribal  
16 lands - held in trust by the United States for the Te-Moak Tribe - managed jointly by the Bureau  
17 of Indian Affairs and the South Fork Band Council of the Te-Moak Tribe. Through this system  
18 of separate land and management, the BLM has no authority to manage the tribal lands, and the  
19 BIA and the South Fork Band have no authority to manage the BLM land. The BLM manages  
20 the public land in accordance with their internal processes, and the South Fork Band Council  
21 manages the tribal land through a majority vote of council members. No individual South Fork  
22 Band Council member has the ability to bind the tribe or take individual action concerning the  
23 tribal land.

24 Management of the Shoshone allotment by both the BLM and the South Fork Bank  
25 Council includes the issuance of grazing permits. Grazing permits issued by the BLM allow the  
26 holder to graze a specific number of cattle on only BLM managed land. In contrast, grazing

1 permits issued separately by the South Fork Band Council only authorize grazing on tribally  
2 managed lands within the Shoshone allotment. Although the tribal and federal lands are separate  
3 and distinct with respect to use and management, they are adjacent to each other and run in a  
4 checkerboard pattern, which inevitably causes some confusion over access, boundary lines, and  
5 resources. Here, SFLP's grazing permits were issued solely by the BLM, and thus, only  
6 authorize grazing on the identified BLM managed land within the Shoshone allotment. SFLP  
7 alleges that the Tribal Defendants and the Federal Defendants have prevented it from exercising  
8 its rights under the federal grazing permits by restricting access to the land and water resources  
9 designated in the grazing permits.

10 On January 30, 2015, SFLP filed its initial complaint against multiple defendants.  
11 Doc. #1. On July 13, 2015, this court dismissed certain tribal defendants for jurisdictional  
12 reasons with prejudice, and dismissed other tribal defendants for pleading deficiencies, without  
13 prejudice. Doc. #27. That order also granted SFLP leave to file an amended complaint. *Id.* On  
14 September 12, 2015, SFLP filed an amended complaint alleging six causes of action: (1) breach  
15 of contract, alleged only against Federal Defendants; (2) intentional interference with the SFLP  
16 contract, alleged against all defendants; (3) intentional interference with access to water, alleged  
17 only against Tribal Defendants; (4) procedural due process, alleged only against Federal  
18 Defendants; (5) substantive due process, alleged only against Federal Defendants; and  
19 (6) conspiracy, alleged against all defendants. Doc #32. In response, defendants filed the present  
20 Motions to Dismiss (Doc. ##35, 41, 57).

## 21 **II. LEGAL STANDARD**

22 To survive a motion to dismiss for failure to state a claim, a complaint must satisfy the  
23 Federal Rule of Civil Procedure 8(a)(2) notice pleading standard. *Mendiondo v. Centinela Hosp.*  
24 *Med. Ctr.*, 521 F.3d 1097, 1103 (9th Cir. 2008). That is, a complaint must contain "a short and  
25 plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2).  
26 The 8(a)(2) pleading standard does not require detailed factual allegations, but a pleading that

1 offers “‘labels and conclusions’ or ‘a formulaic recitation of the elements of a cause of action’”  
2 will not suffice. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl.*  
3 *Corp. v. Twombly*, 550 U.S. 544, 555 (2007)).

4 To satisfy the plausibility standard, 8(a)(2) requires a complaint to “contain sufficient  
5 factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Id.*  
6 (quoting *Twombly*, 550 U.S. at 570). A claim has facial plausibility when the pleaded factual  
7 content allows the court to draw the reasonable inference, based on the court’s “judicial  
8 experience and common sense,” that the defendant is liable for the misconduct alleged. *See id.* at  
9 678-79. The plausibility standard “is not akin to a probability requirement, but it asks for more  
10 than a sheer possibility that a defendant has acted unlawfully. Where a complaint pleads facts  
11 that are merely consistent with a defendant’s liability, it stops short of the line between  
12 possibility and plausibility of entitlement to relief.” *Id.* at 678 (internal quotation marks omitted).

13 In reviewing a motion to dismiss, the court accepts the facts alleged in the complaint as  
14 true. *Id.* The “factual allegations that are taken as true must plausibly suggest an entitlement to  
15 relief, such that it is not unfair to require the opposing party to be subjected to the expense of  
16 discovery and continued litigation.” *Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011).  
17 Moreover, “bare assertions . . . amount[ing] to nothing more than a formulaic recitation of the  
18 elements of a . . . claim . . . are not entitled to an assumption of truth.” *Moss v. U.S. Secret Serv.*,  
19 572 F.3d 962, 969 (9th Cir. 2009) (citing *Iqbal*, 556 U.S. at 681) (brackets in original) (internal  
20 quotation marks omitted). The court discounts these allegations because “they do nothing more  
21 than state a legal conclusion—even if that conclusion is cast in the form of a factual allegation.”  
22 *Id.* (citing *Iqbal*, 556 U.S. at 681). “In sum, for a complaint to survive a motion to dismiss, the  
23 non-conclusory ‘factual content,’ and reasonable inferences from that content, must be plausibly  
24 suggestive of a claim entitling the plaintiff to relief.” *Id.*

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1 **III. DISCUSSION**

2 **1. Tribal Defendants' Motions to Dismiss (Doc. ## 41, 57)**

3 In its complaint, SFLP alleges that the Tribal Defendants have prevented it from  
 4 exercising its rights under the BLM issued grazing permits by preventing access to certain  
 5 grazing lands and depriving it of water historically allocated to BLM land within the Shoshone  
 6 allotment. However, throughout the amended complaint there are no specific, individual  
 7 allegations against any Tribal Defendant that allege specific harm to SFLP. Rather, SFLP pleads  
 8 that the collective action of the South Fork Band Council, consisting of the Tribal Defendants,  
 9 deprived it of, or interfered with, its use of lawfully obtained BLM grazing permits. In their  
 10 motions to dismiss, the Tribal Defendants argue that all allegations plead against them in the  
 11 amended complaint are based upon actions taken in their official capacities as voting members of  
 12 the South Fork Band Council and are therefore barred by sovereign immunity. *See* Doc. ##41,  
 13 57. The court agrees.

14 This court previously found that the Te-Moak Tribe has not waived its sovereign  
 15 immunity to suit when it dismissed the tribe with prejudice. *See* Doc. #27, p.3 (“there has been  
 16 no express waiver of sovereign immunity by either defendant Te-Moak Tribe or defendant South  
 17 Fork for the present action.”). A tribe’s sovereign immunity extends to tribal officials so long as  
 18 they are acting in their official capacity. *Pistor v. Garcia*, 791 F.3d 1104, 1112 (9th Cir. 2015).  
 19 “The general bar against official-capacity claims . . . [is] that tribal officials are immunized  
 20 from suits brought against them *because of* their official capacities. That is, because the powers  
 21 they possess in those capacities enable them to grant the plaintiffs relief on behalf of the tribe.”  
 22 *Id.* (emphasis in original) (quoting *Native Am. Distrib. v. Seneca–Cayuga Tobacco Co.*, 546 F.3d  
 23 1288, 1296 (10th Cir. 2008)).

24 Here, the court has reviewed the documents and pleadings on file and finds that at all  
 25 times pertinent to this action the Tribal Defendants were acting in their official capacity as Tribal  
 26 and Band Council members, and are thus entitled to sovereign immunity. In its amended

1 complaint, SFLP does not make any allegations against the Tribal Defendants that would  
2 preclude extending sovereign immunity to their alleged conduct. The principal harms alleged by  
3 SFLP include: the erection of fences that restrict SFLP access to tribal land, removing water  
4 pumping equipment from tribal lands that deprives SFLP's cattle of water, and voting on tribal or  
5 band matters in a way that specifically disadvantages SFLP. Each of the aforementioned harms  
6 are caused directly and solely by a vote of the South Fork Band Council. When the sole basis for  
7 relief against a tribal defendant stems from that tribal defendant's vote at a tribal or band council  
8 meeting, the Ninth Circuit has historically extended sovereign immunity to that defendant. *See*  
9 *id.*; *Hardin v. White Mountain Apache Tribe*, 779 F.2d 476, 478 (9th Cir. 1985) (holding that  
10 high-ranking tribal council members are entitled to sovereign immunity when sued individually  
11 for voting on tribal matters); *Native Am. Distrib. v. Seneca-Cayuga Tobacco Co.*, 546 F.3d 1288,  
12 1296 (10th Cir. 2008) (holding that tribal leaders were entitled to sovereign immunity when  
13 accused of violations in their individual capacity stemming from tribal votes affecting the  
14 commercial activity of the tribe); *Imperial Granite Co. v. Pala Band of Mission Indians*, 940  
15 F.2d 1269, 1271 (9<sup>th</sup> Cir. 1991) (finding that when the only individual action taken is a vote by  
16 tribal officials, any suit is actually against the tribe, and not against the individuals). The court  
17 sees no reason to depart from this established precedent in this action. Nowhere in the complaint  
18 does SFLP allege individual action by a Tribal Defendant, such as a Tribal Defendant actually  
19 erecting a fence that prevented SFLP from grazing certain land or personally removing water  
20 pumping equipment from tribal land. Rather, the pleadings make clear that Tribal Defendants  
21 simply exercised their powers as voting members of the South Fork Band Council. Therefore, the  
22 court finds that Tribal Defendants are entitled to sovereign immunity in this action and shall  
23 dismiss them accordingly.

24       Additionally, the relief sought by SFLP in its amended complaint, namely monetary and  
25 injunctive relief, supports the court's finding that Tribal Defendants were engaged in their  
26 official capacities and are thus entitled to sovereign immunity in this action. "The general rule is

1 that a suit is against the sovereign if the judgment sought would expend itself on the public  
2 treasury or domain, or interfere with the public administration, or if the effect of the judgment  
3 would be to restrain the Government from acting, or to compel it to act.” *Shermoen v. United*  
4 *States*, 982 F.2d 1312, 1320 (9th Cir. 1992) (citations and internal quotation marks omitted); *see*  
5 *also, Land v. Dollar*, 330 U.S. 731, 738 (1947), *Larson v. Domestic & Foreign Corp.*, 337 U.S.  
6 682, 704 (1949) (holding that a suit is against individuals in their official capacity if the relief  
7 sought would be paid for or accomplished by the sovereign entity). Here, SFLP seeks monetary  
8 relief and injunctive relief in the form of permanent injunctions against the Tribal Defendants.  
9 Because SFLP makes no mention of individual action by the Tribal Defendants, the court can  
10 only conclude that SFLP is requesting compensatory damages from the Tribe itself for the  
11 defendants’ conduct, rendering this suit a suit against the sovereign. Further, the requested  
12 injunctive relief is requested not only against the Tribal Defendants, who are current South Fork  
13 Band Council members, but also against their successors. The nature of the requested injunctive  
14 relief makes clear that this relief is not requested against any one individual for that individual’s  
15 actions, but, rather, against the council itself for its management decisions that have allegedly  
16 harmed SFLP. Even if temporally limited to the current South Fork Band Council members, the  
17 grant of the injunctive relief requested would surely restrain the South Fork Band Council from  
18 acting, or compel it to act—again, rendering this suit against the Tribal Defendants a suit against  
19 the sovereign itself. Moreover, the simple fact that the injunctive relief sought by SFLP could not  
20 be provided by the Tribal Defendants alone, but would necessitate this court to enjoin their  
21 successors as well as additional members of the South Fork Band Council who are not parties to  
22 this action, is additional indicia that this suit is against the Tribal Defendants in their official  
23 capacities as members of the South Fork Band Council. Accordingly, the court shall dismiss the  
24 Tribal Defendants with prejudice.

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1           **2. Federal Defendants' Motion to Dismiss (Doc. # 35)**

2           a. Breach of Contract

3           SFLP's first cause of action alleges that the Federal Defendants breached a contract with  
4 SFLP by frustrating its use of lawfully obtained grazing permits. Doc. #32. In their Motion to  
5 Dismiss, Federal Defendants contend that because the damages sought by SFLP on this cause of  
6 action are in excess of \$10,000, this court does not have jurisdiction over this claim. Doc. #35.

7           Generally, exclusive jurisdiction over claims against the United States for monetary  
8 damages is conferred to the U.S. Court of Federal Claims. TUCKER ACT, 28 U.S.C. § 1346  
9 (2012). One narrow exception to this grant of exclusive jurisdiction is for claims against the  
10 United States that do not exceed \$10,000. LITTLE TUCKER ACT, 28 U.S.C. § 1346 (2012). In such  
11 a case, a district court is granted concurrent jurisdiction over the claim with the U.S. Court of  
12 Federal Claims. To fall under this narrow exception, a party may waive their right to recover  
13 more than \$10,000 in order to satisfy the jurisdictional requirements of the Little Tucker Act,  
14 thereby preserving a district court's concurrent jurisdiction. *U.S. v. Park Place Associates, Ltd.*,  
15 563 F.3d 907, 927 (9th Cir. 2009). Further, a waiver of damages in excess of \$10,000 need not  
16 be initially plead in the complaint, but can be made later, even if greater damages are alleged in  
17 the complaint. *DiLuigi v. Kafkalas*, 437 F. Supp. 863, 870 (M.D. Pa. 1977), *judgment vacated on*  
18 *other grounds*, 584 F.2d 22 (3d Cir. 1978).

19           Here, in its opposition to the motion to dismiss, SFLP specifically waives its right to  
20 receive a sum greater than \$10,000 on its breach of contract cause of action. Doc. #42, p. 8.  
21 Because SFLP waived its right to receive a sum greater than \$10,000, this court has concurrent  
22 jurisdiction over this cause of action pursuant to The Little Tucker Act. *See* 28 U.S.C. § 1346.

23           As the court has determined that it has concurrent jurisdiction over SFLP's breach of  
24 contract cause of action, the court must now evaluate the merits of SFLP's breach of contract  
25 claim. Under Nevada state law, the plaintiff in a breach of contract action must allege (1) the

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1 existence of a valid contract; (2) a breach by the defendant; and (3) damage as a result of the  
 2 breach. *Saini v. Int'l Game Tech.*, 434 F. Supp. 2d 913, 919–20 (D. Nev. 2006).

3 Here, the grazing permits in this action do not constitute valid contracts for the purposes  
 4 of state law, but rather are licenses conferring certain privileges, revocable at the government's  
 5 discretion. *See Hage v. United States*, 35 Fed. Cl. 147, 167 (1996) (“All [of] the [federal] courts  
 6 which have considered this issue have held or assumed such agreements to be licenses which  
 7 confer certain privileges to the permittee, revokable [sic] at the government's discretion.”);  
 8 *Fulton v. United States*, 825 F. Supp. 261, 263 (D. Nev. 1993) (“a grazing permit is a fully  
 9 revocable, nontransferable privilege. Any reliance on contract law by plaintiff is misplaced and  
 10 irrelevant.”); *Colvin Cattle Co. v. United States*, 67 Fed. Cl. 568 (2005) *aff'd*, 468 F.3d 803 (Fed.  
 11 Cir. 2006) (“lease to graze cattle issued under the Taylor Grazing Act does not constitute a  
 12 contract binding the United States.”); *United States v. Estate of Hage*, 810 F.3d 712, 717 (9th  
 13 Cir. 2016) (quoting *Swim v. Bergland*, 696 F.2d 712, 719 (9th Cir. 1983); *accord West*, 232 F.2d  
 14 at 697–98; *Osborne v. United States*, 145 F.2d 892, 896 (9th Cir. 1944)) (“a grazing permit ‘has  
 15 always been a revocable privilege’ and is not a ‘property right[ ].’”). Because the grazing permits  
 16 in question are revocable licenses and not contracts, SFLP cannot maintain a breach of contract  
 17 action against any of the Federal Defendants as a matter of law. Therefore, the court shall grant  
 18 the Federal Defendants’ Motion to Dismiss as to this cause of action.

19 b. Intentional Interference with the SFLP Contract<sup>3</sup>

20 SFLP’s second cause of action for intentional interference alleges the Federal Defendants  
 21 conspired to interfere with SFLP's grazing permits by persuading Tribal Defendants to erect  
 22 fences that prevented SFLP from accessing the areas identified in the permits and allowing  
 23 overgrazing by non-parties in the designated areas. Doc. #32. The Federal Employees argue that  
 24 Federal Tort Claims Act (“FTCA”) is the exclusive remedy for those alleging a tort against the

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 26 <sup>3</sup> This count was initially alleged against all Federal Defendants, but SFLP has since withdrawn  
 the claim against the United States Defendants, thereby leaving only the Federal Employees as  
 defendants.

1 United States or its employees, and therefore, this claim shall be dismissed. Doc. #35. The court  
2 agrees.

3 The FTCA is the exclusive remedy for monetary damages for injuries “caused by the  
4 negligent or wrongful act or omission of any employee of the government while acting within  
5 the scope of his office or employment, under circumstances where the United States, if a private  
6 person, would be liable to the claimant in accordance with the law of the place where the act or  
7 omission occurred.” 28 U.S.C. § 1346(b)(1) (2012). Before filing an action against the federal  
8 government under the FTCA, a plaintiff must file an administrative claim to the appropriate  
9 federal agency within two years after the alleged wrongful action occurred. 28 U.S.C. § 2675  
10 (2012). The administrative claim must specify the amount of compensation requested, and a  
11 plaintiff may not later seek an amount in excess of the administrative claim. *Id.* If the agency  
12 does not dispose of the administrative claim within six months, the claimant may consider the  
13 lack of decision to be a final denial, and proceed with the filing of a civil action. *Id.* If the agency  
14 denies the administrative claim, suit must be filed within six months of the date of mailing of  
15 such denial. *Id.*

16 Here, SFLP did not file an administrative claim with either the BLM or BIA before filing  
17 this suit. As such, SFLP did not comply with the mandatory administrative exhaustion  
18 requirements of the FTCA and is barred from bringing this action as a matter of law. *See* 28  
19 U.S.C. § 2675 (2012).

20 Additionally, even if SFLP had complied with the administrative requirements of the  
21 FTCA, because the grazing permits issued to SFLP are licenses and not contracts, a tortious  
22 interference claim would still be defective for want of a valid contract. In Nevada, to sufficiently  
23 allege an intentional interference with contractual relations, a plaintiff must allege: (1) a valid  
24 and existing contract, (2) the defendant's knowledge of the contract, (3) intentional acts intended  
25 or designed to disrupt the contractual relationship, (4) actual disruption of the contract, and  
26 (5) resulting damage. *J.J. Indus., LLC v. Bennett*, 71 P.3d 1264 (2003). For the same reason

1 SFLP's breach of contract claim fails above, SFLP's intentional interference claim fails—the  
 2 grazing permits obtained by SFLP do not constitute a contract. Therefore, the court shall grant  
 3 the Federal Defendants' Motion to Dismiss as to this cause of action.

4 c. Procedural and Substantive Due Process

5 SFLP's fourth and fifth causes of action allege procedural and substantive due process  
 6 violations against the Federal Defendants. Specifically, SFLP alleges that Federal Defendants  
 7 allowed members of non-party Te-Moak Livestock Association to displace SFLP's cattle and  
 8 allowed other cattle to graze on land permitted to SFLP without permits, thereby depriving SFLP  
 9 of the full value of its grazing permits. SFLP's claims rely solely on a vacated and reversed  
 10 decision from this district, *United States v. Estate of Hage*, for establishing a protected property  
 11 interest for the purposes of procedural and substantive due process. 2013 WL 2295696, (D. Nev.  
 12 May 24, 2013), *vacated in part*, 810 F.3d 712 (9th Cir. 2016), and *rev'd in part*, 2016 WL  
 13 209847 (9th Cir. Jan. 15, 2016).

14 In their motion to dismiss, the Federal Defendants argue that SFLP did not possess a  
 15 protected property interest in their grazing permits and that any alleged deprivation in this action  
 16 is unrelated to a fundamental interest protected by substantive due process. The court agrees.

17 For the purposes of procedural due process, the property interest is derived from state  
 18 law, as opposed to the Constitution. *Regents of Univ. of Michigan v. Ewing*, 474 U.S. 214, 229  
 19 (1985) (citing *Board of Regents v. Roth*, 408 U.S. 564, 577 (1972)). Whereas, substantive due  
 20 process rights are created only by the Constitution, and are limited to rights that have been  
 21 determined to be fundamental. *Id.*

22 To successfully allege a procedural due process violation, SFLP must allege: "(1) a  
 23 deprivation of a constitutionally protected liberty or property interest, and (2) a denial of  
 24 adequate procedural protections." *Wilson v. Holder*, 7 F. Supp. 3d 1104, 1123 (D. Nev. 2014)  
 25 (quoting *Brewster v. Bd. of Educ. of Lynwood Unified Sch. Dist.*, 149 F.3d 971, 982 (9th Cir.  
 26 1998). Whereas, to successfully allege a substantive due process violation, SFLP must allege a

1 deprivation of a fundamental constitutional right. “The concept of substantive due process,  
 2 semantically awkward as it may be, forbids the government from depriving a person of life,  
 3 liberty, or property in such a way that shocks the conscience or interferes with rights implicit in  
 4 the concept of ordered liberty.” *Nunez v. City of Los Angeles*, 147 F.3d 867, 871 (9th Cir. 1998)  
 5 (citations and internal quotation marks omitted). However, “the Ninth Circuit explained that  
 6 recent jurisprudence restricts the reach of the protections of substantive due process primarily to  
 7 liberties ‘deeply rooted in this Nation's history and tradition.’” *Gypsum Res., LLC v. Masto*, 672  
 8 F. Supp. 2d 1127, 1144 (D. Nev. 2009) (citing *Armendariz v. Penman*, 75 F.3d 1311, 1318 (9th  
 9 Cir. 1996)). “‘Those rights are few, and include the right to marry, to have children, to direct the  
 10 education and upbringing of one's children, to marital privacy, to use contraception, to bodily  
 11 integrity, to abortion, and to refuse unwanted lifesaving medical treatment.’” *McCarty v. Roos*,  
 12 998 F. Supp. 2d 950, 954 (D. Nev. 2014) (quoting *Juvenile Male*, 670 F.3d at 1012).

13 Here, the Ninth Circuit has repeatedly held that the regular renewal of grazing permits  
 14 does not create a compensable property interest for due process purposes, and that grazing  
 15 permits are a privilege, not a right. *See United States v. Estate of Hage* 810 F.3d 712, 717 (9th  
 16 Cir. 2016) (quoting *Swim v. Bergland*, 696 F.2d 712, 719 (9th Cir. 1983) (“a grazing permit ‘has  
 17 always been a revocable privilege’ and is not a ‘property right. . .’”)); *Fence Creek Cattle Co. v.*  
 18 *U.S. Forest Serv.*, 2008 WL 4610272, at \*28 (D. Or. Oct. 16, 2008) *aff’d*, 602 F.3d 1125 (9th Cir.  
 19 2010) (“The Ninth Circuit has clearly held that the regular renewal of grazing permits does not  
 20 create a compensable property interest, and that grazing permits are a privilege, not a right.”);  
 21 *Bischel v. United States*, 415 F. Supp. 2d 1211, 1212 (D. Nev. 2006) (“The governing regulations  
 22 are clear that grazing and livestock use permits convey no title, right, or interest to the permit  
 23 holder.”); *Stevens Cty. v. U.S. Dep't of Interior*, 507 F. Supp. 2d 1127, 1136 (E.D. Wash. 2007)  
 24 (“Ninth Circuit case law compels this Court to find that no property interest in livestock grazing  
 25 permits exist.”).

1 Because a grazing permit is a revocable privilege and not a compensable property right,  
2 SFLP cannot maintain a procedural due process claim against the Federal Defendants as a matter  
3 of law. Similarly, because there is no deprivation of a constitutionally protected fundamental  
4 right, SFLP cannot maintain a substantive due process claim against the Federal Defendants as a  
5 matter of law. Accordingly, the court shall grant the Federal Defendants' Motion to Dismiss as to  
6 the procedural and substantive due process causes of action.

7 d. Conspiracy<sup>4</sup>

8 SFLP's last cause of action alleges civil conspiracy against the Federal Employees.  
9 Under Nevada state law, in order to allege a cause of action for civil conspiracy, a plaintiff must  
10 establish: (1) the commission of an underlying tort; and (2) an agreement between the defendants  
11 to commit that tort. *Peterson v. Miranda*, 57 F. Supp. 3d 1271, 1278 (D. Nev. 2014) (citing *GES,*  
12 *Inc. v. Corbitt*, 117 Nev. 265, 21 P.3d 11, 15 (2001)).

13 Here, as addressed above, SFLP has failed to allege any underlying torts against the  
14 Federal Employees. Accordingly, the court shall grant the Federal Defendants' Motion to  
15 Dismiss as to this cause of action.

16  
17 IT IS THEREFORE ORDERED that Federal Defendants' Motion to Dismiss (Doc. #35)  
18 is GRANTED.

19 IT IS FURTHER ORDERED that defendants United States of America, United States  
20 Department of the Interior, Bureau of Land Management, Bureau of Indian Affairs, Brad Sones,  
21 Joseph McDade, Rich Adams, Dave Smith, Amy Leuders, and Bryan L. Bowke are DISMISSED  
22 from this action with prejudice.

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25 <sup>4</sup> This count was initially alleged against all Federal Defendants, but SFLP has since withdrawn  
26 the claim against the United States Defendants, thereby leaving only the Federal Employees as  
defendants. This count was also alleged against the Tribal Defendants, but is not applicable on  
the basis of sovereign immunity.

1 IT IS FURTHER ORDERED that defendant Alice Tybo's Motion to Dismiss (Doc. #41)  
2 is GRANTED with prejudice.

3 IT IS FURTHER ORDERED that defendants Cheryl Mose-Temoke, Gilbert Temoke,  
4 and Brandon Reynolds' Motion to Dismiss (Doc. #57) is GRANTED with prejudice.

5 IT IS FURTHER ORDERED that defendants Alice Tybo, Cheryl Mose-Temoke, Gilbert  
6 Temoke, and Brandon Reynolds are DISMISSED from this action with prejudice.

7 IT IS SO ORDERED.

8 DATED this 27th day of April, 2016.

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11 LARRY R. HICKS  
12 UNITED STATES DISTRICT JUDGE  
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